

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

**HILARY BOWE RICKS**  
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**ANN L. GOODWIN**  
Special Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

LARONDA DUNBAR,  
  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
  
Appellee-Plaintiff.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 49A05-0704-CR-197

---

APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Stanley Kroh, Judge Pro Tempore  
Cause No. 49F18-0601-FD-12910

---

**October 3, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-defendant Laronda S. Dunbar appeals her conviction for Theft,<sup>1</sup> a class D felony. Specifically, Dunbar claims that the trial court erred in permitting two State witnesses to testify at trial because the prosecutor did not disclose their names to her prior to trial in a timely manner and that the evidence was insufficient to support her conviction. Finding no error, we affirm the judgment of the trial court.

### FACTS

During the fall of 2005, Dunbar worked as a home health care aide for Thisby Brannon in Indianapolis. On November 4, 2005, Dunbar, Brannon, and two of Brannon's friends—Stephen Holston-Ward and Juan Cosby—went to the eye doctor and picked up some new glasses for Brannon. Brannon paid for the glasses with a Visa credit card that she used only for extraordinary expenses, including doctor's appointments. Brannon's domestic partner—Sharon Cosby—typically had possession of the credit card, but she had given Brannon the card to pay for the glasses.

After paying for the glasses, Brannon placed the credit card in her wallet. She then handed her wallet to Holston-Ward and told him to give it to Dunbar. After Dunbar took the wallet, she left the group and returned a few minutes later. Dunbar then gave the wallet to Brannon as they were getting ready to leave. The group returned to Brannon's residence, and Brannon placed her wallet on a nightstand next to her bed. Brannon did not leave her residence, and she had no visitors inside her home after she returned from the eye doctor.

---

<sup>1</sup> Ind. Code § 35-43-4-2.

When Cosby asked Brannon for the credit card later that day, Brannon discovered that it was missing from her wallet. As a result, Brannon contacted the police department and reported that Dunbar had probably taken the card. During an investigation, it was determined that Brannon's card had been used at an Indianapolis Wal-Mart on November 4, 2005, for an unauthorized purchase in the amount of \$477.24. The police obtained a videotape that showed Dunbar and her boyfriend at the Wal-Mart store using Brannon's credit card to pay for the merchandise. Brannon viewed the tape and identified Dunbar. It was also determined that two other unauthorized charges had been made with Brannon's credit card that same day.

On January 27, 2006, Dunbar was charged with theft. On February 27, 2007, the prosecutor notified Dunbar's counsel by electronic mail that it intended to call Holston-Ward and Cosby as witnesses at the March 1, 2007 trial. The following day, the State filed an amended witness list that included Holston-Ward and Cosby.

At trial, Brannon testified that she did not know Dunbar's boyfriend and denied giving Dunbar or her boyfriend the credit card. Dunbar also denied authorizing the \$477.24 Wal-Mart purchase on November 4, 2005, as well as the other purchases that were made on her card that same evening. At some point during the trial, Dunbar's counsel objected to Holston-Ward and Cosby's testimony and moved to exclude them as witnesses on the basis that they had not been included on the State's witness list ten days before trial. In response, the prosecutor asserted that he had notified Dunbar's counsel on February 27, 2007, that he intended for those witnesses to testify at trial and that he had informed counsel of the substance of the testimony. After conferring with counsel, the trial court denied Dunbar's

motion to exclude Holston-Ward and Cosby as witnesses, but provided Dunbar's counsel with the opportunity to speak with them before resuming the trial. Dunbar's counsel did not move for a continuance after the motion was denied, and she declined to interview either Cosby or Holston-Ward before they testified.

Dunbar testified at trial that Brannon had offered her the use of the credit card but that she had declined to take it. Dunbar further testified that Brannon "secretly" gave the card to Dunbar's boyfriend and authorized him to use it. Tr. p. 95, 99.

Following the presentation of evidence, the trial court found Dunbar guilty as charged. The trial court observed that although it had considered Holston-Ward and Cosby's testimony, it determined that Dunbar had taken the card based upon Brannon's credible testimony. Dunbar now appeals.

## DISCUSSION AND DECISION

### I. Testimony of Holston-Ward and Cosby

Dunbar claims that her conviction must be set aside because the trial court abused its discretion in permitting Cosby and Holston-Ward to testify. Specifically, Dunbar maintains that the witnesses should not have been allowed to testify because the State did not disclose their names to her counsel in a timely fashion as required by the local criminal rules.<sup>2</sup> Dunbar asserts that "without their testimony there would not have been any circumstantial

---

<sup>2</sup> Dunbar points out that in accordance with Marion Superior Court Criminal Rule 1, the State must disclose all relevant items and information to the defense within twenty (20) days of the initial hearing and in completion by the omnibus date unless good cause is shown, subject to sanctions including exclusion of the evidence. Appellant's Br. p. 7. The names and contact information of witnesses are included in this requirement pursuant to Marion Superior Court Criminal Rule 2(a)(1). Id.

evidence to counter Dunbar and Williams' testimony that Brannon had given the card to Williams." Appellant's Br. p. 8.

In resolving this issue, we initially observe that Dunbar did not move for a continuance of the trial either before or after the trial court denied her motions to exclude the testimony of either witness. Thus, the issue is waived. See Warren v. State, 725 N.E.2d 828, 832 (Ind. 2000) (holding that the failure to alternatively request a continuance upon moving to exclude evidence, where a continuance may be an appropriate remedy, constitutes a waiver of any alleged error pertaining to a discovery violation).

Waiver notwithstanding, Dunbar was obligated to demonstrate that the State deliberately violated a discovery order and that the violation deprived the defendant of a fair trial. Ware v. State, 859 N.E.2d 708, 722-23 (Ind. Ct. App. 2007), trans. denied. Here, Dunbar never claimed that the State's failure to include Cosby and Holston-Ward as witnesses at an earlier time was a deliberate act. Moreover, Dunbar has failed to show that their testimony "substantially impeded [Dunbar's] likelihood of proceeding with her defense." Beauchamp v. State, 788 N.E.2d 881, 894 (Ind. Ct. App. 2003). Indeed, Dunbar's counsel appeared unaffected by the prospect of the admission of the testimony because she did not speak with either witness prior to their testimony despite being afforded the opportunity to do so by the trial court. Tr. p. 37, 39-40, 49-50. Even more compelling, the trial court made it clear when announcing its verdict that it would have found Dunbar guilty as charged even if it had excluded the challenged testimony. Id. at 115. Hence, Dunbar's

argument fails, and we conclude that the trial court did not commit reversible error in permitting Cosby and Holston-Ward to testify.

## II. Sufficiency of the Evidence

Dunbar contends that the evidence was insufficient to support her conviction. In essence, Dunbar contends that the State failed to satisfy its burden of proof in a “wholly circumstantial case” because “no one testified that they saw Dunbar take the credit card.” Appellant’s Br. p. 5.

When reviewing a challenge to the sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995). We look to the evidence and the reasonable inferences therefrom that support the verdict. Id. The conviction will be affirmed if evidence of probative value exists from which the fact finder could find the defendant guilty beyond a reasonable doubt. Id. The fact finder is free to accept or reject any evidence, and we will affirm unless “no rational fact finder” could have found the defendant guilty beyond a reasonable doubt. Clark v. State, 728 N.E.2d 880, 887 (Ind. Ct. App. 2000).

We also note that a criminal conviction may be based solely on circumstantial evidence. Moore v. State, 652 N.E.2d 53, 55 (Ind. 1995). Even when the evidence is entirely circumstantial, the evidence need not exclude every reasonable hypothesis of innocence. Id. It is enough if an inference reasonably tending to support the verdict can be drawn from the circumstantial evidence. Id.

The offense of theft requires the knowing or intentional exertion of unauthorized control over the property of another person with the intent to deprive the other person of any part of the property's value or use. I.C. § 35-43-4-2(a). In this case, the charging information filed against Dunbar provided in relevant part:

On or about November 4, 2005, LaRonda S. Dunbar did knowingly exert unauthorized control over the property, to wit: a Capital One Visa credit card, of another person, to wit: Thisby Brannon, with the intent to deprive the person of any part of its value or use.

Appellant's App. p. 16.

The evidence at trial showed that Brannon placed her credit card in her wallet after paying for her new glasses on November 4, 2005. Tr. p. 13, 41, 52-53. Dunbar held the wallet for Brannon and subsequently left the doctor's office by herself for a period of time. Id. at 42, 53. Later that day, Brannon discovered that her credit card was missing from her wallet. Id. at 16, 65-66. It was also established that Dunbar was with her boyfriend when he made a purchase with Brannon's credit card at Wal-Mart and signed Brannon's name to the receipt. Ex. 1, 3; Tr. p. 69-70, 85-87, 88-89, 101, 105. Brannon testified that she did not give Dunbar or her boyfriend the credit card, and she did not authorize either of them to use it. Id. at 23-24, 26-27.

Although Dunbar presents alternative explanations for her conduct and speculates about Brannon's motivation for testifying, her arguments are merely an invitation for us to reweigh the evidence and judge the credibility of the witnesses—an invitation that we decline. As a result, we find the evidence sufficient to support Dunbar's conviction for theft.

The judgment of the trial court is affirmed.

BAILEY, J., and VAIDIK, J., concur.